# PROPOSED

# GUIDELINES ON THE APPLICATION

# OF

# THE INDIVIDUAL'S RIGHTS PROTECTION ACT

# TO

# A PERSON WITH A PHYSICAL CHARACTERISTIC

# IN

# SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC

# OR

# TENANCY

"...it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."

...From the Preamble to The
Individual's Rights Protection Act.

Alberta Human Rights Commission
June 1, 1983

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## A. INTRODUCTION

The Individual's Rights Protection Act (I.R.P.A.) of Alberta was enacted in 1972 and amended on September 1, 1980 to include physical characteristics as a protected class. This Act is the anti-discrimination law of the province.

The I.R.P.A. applies to all provincial government departments and agencies as well as all businesses and industries under provincial jurisdiction in all facets of employment, business and tenancy policies, practices and referrals.

The Alberta Human Rights Commission, established in 1973, administers the I.R.P.A. The Commission has a two-fold function of education and enforcement.

Among other provisions, the I.R.P.A. makes it a discriminatory act to deny an individual services or tenancy on the basis of his/her physical characteristics. Specifically, sections 3 and 4 of the Act state that:

> 3) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall
>
> a) deny to any person or class of persons any accommodation, services or facilities customarily available to the public, or

b) discriminate against any person or class of person with respect to any accommodation, services or facilities customarily available to the public,

because of the race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

4) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

(a) deny to any person or class of persons the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or

(b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling units,

because of the race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin of that person or class of persons or of any other persons or class of persons. (1)

The purpose of this paper is to set out guidelines pursuant to sections 3 and 4 of the I.R.P.A., with respect to physical characteristics. These guidelines have been written to provide the public with a better understanding of this aspect of the I.R.P.A.

This paper provides definitions which aid in reading the guidelines, followed by a discussion of the basic principle on which the guidelines are based. The guidelines are then presented, followed by a discussion of the subject areas to which they apply.

1. Individual's Rights Protection Act, Chapter 1-2, RSA, 1980.

## B. DEFINITIONS

The following definitions aid in reading the guidelines:

### 1. Physical Characteristics

"...any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device".(2)

For the purpose of this paper only, where the term physical disability is used it will mean physical characteristics as defined in the Act.

2. Individual's Rights Protection Act, Chapter 1 - 2 , RSA, 1980.

2. **Infirmity**

An abnormal weakness such as impaired heart functions as well as acute diseases.

Beyond a temporary disorder; an ailment of a somewhat established or settled character which at least has a tendency to impair a person's health and physical vigor.

As the word appears in an application for life, health or accident insurance or in any representation, warranty or condition contained in such a policy; a defective condition of a substantial character which in some material degree impairs the physical condition and health of applicant and increases the chance of death, sickness or accident against which the insurance company is asked to issue insurance.

## 3. Accommodation, Services and Facilities

For the purpose of this paper, these terms include all accommodation, services and facilities customarily available to the public. Without limiting the generality of this definition, these terms include hotels, motels, eating and drinking establishments, public buildings, recreational facilities or programs, transportation, police services, insurance services, education facilities, entertainment facilities, and commercial outlets.

For the purpose of this paper, where the term services is used, it will mean accommodation, services and facilities as defined here.

## 4. Tenancy

The term tenancy applies to publicly and privately-owned residential and sleeping occupancies, which may include the rental of houses, condominiums, apartment buildings, hotels and motels. It does not apply to an owner-occupied residence, whose primary function is single family occupancy.

## 5. Equal Treatment

The use of this term in this paper represents the concept of equivalent as opposed to identical services. In other words, in order to meet the needs of persons with a physical disability, changes may have to be made to services or the physical environment associated with tenancy.

## C. REASONABLE ACCOMMODATION - THE UNDERLYING PRINCIPLE FOR GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL DISABILITY IN SERVICES OR TENANCY

The preamble to the Individual's Rights Protection Act states that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."(3)

In keeping with the above, and sections 3 & 4 of the I.R.P.A., these guidelines are based on a fundamental principle, accepted by the Alberta Human Rights Commission, that a person with a physical disability should be able to participate, to the greatest extent possible, within the same environment enjoyed by a person without a physical disability. This is the principle of reasonable accommodation. Further, having a physical disability does not decrease the rights and responsibilities of an individual as a member of society. Finally, services or rental units should never be designed to specifically exclude persons with a physical disability.

3. Individual's Rights Protection Act, Chapter 1 - 2 , RSA, 1980.

## REASONABLE ACCOMMODATION IN PROVIDING SERVICES OR TENANCY

**REASONABLE ACCOMMODATION MEANS THE ADAPTATION OF SERVICES, OR THE PHYSICAL ENVIRONMENT ASSOCIATED WITH TENANCY TO ENABLE UTILIZATION OF THE SERVICE OR FACILITY BY A PERSON WHO MAY OTHERWISE BE RESTRICTED FROM USING THEM.**

**TO "REASONABLY ACCOMMODATE" MAY REQUIRE PHYSICAL ALTERATIONS, PROVISION OF TECHNICAL AIDS OR APPARATUS, OR RELOCATION OF PROGRAMS.**

Denial of the advantages of services or tenancy to a physically disabled individual, on the basis of that individual's disability, may be considered discriminatory. Further, it is incumbent upon a service provider or landlord to provide reasonable accommodation for the limitations or special needs of a person with a physical disability.

The qualifier reasonable in the term reasonable accommodation is obviously very significant. A service provider or landlord may find that the following statements aid them in providing reasonable accommodation:

1. A decision to provide services or tenancy to a physically disabled person should not be based on assumptions about all persons having a given physical disability. Every effort should be made to consider the specific limitations of the individual.

2. If it is not possible for a service provider or landlord to reasonably accommodate a physically disabled person in the usual manner, alternatives should be considered. The alternative chosen should have the least adverse impact possible on the disabled person.

If the service provider or landlord can demonstrate that any of the following conditions are valid, then it may not be possible to accommodate the physically disabled individual:

a. the existing environment of the service or tenancy is such that no method of accommodation is feasible; or

b. providing the service or tenancy in an alternate manner is not practical or is financially prohibitive; or

c. a predictable safety hazard exists.

**EXAMPLE**

If to enable total access to library facilities would require that every book be available in braille, or that every community library branch have a reading machine, to accommodate could mean that no libraries could fulfill the criteria. The result would be that library services would be curtailed for economic reasons.

## D. GUIDELINES

(All of these guidelines are subject to the principle of reasonable accommodation.)

### I. ACCESSIBILITY

**A PERSON WITH A PHYSICAL DISABILITY SHOULD NOT BE DENIED ACCESS TO, NOR THE BENEFITS OF, A SERVICE OR TENANCY, SOLELY ON THE BASIS OF HIS/HER PHYSICAL DISABILITY.**

All persons have the right of access to public services while recognizing the concept of reasonable accommodation. The existence of a physical disability is not in itself an acceptable basis for denying an individual access to a service, or a rental unit.

Accessibility to services is measured by considering the evidence that all persons receive equal delivery of the advantages that may result from the use of a service. Accessibility to tenancy is measured by considering evidence that a landlord has attempted to provide reasonable accommodation to a prospective tenant.

**EXAMPLE**

Cafes, hotels and motels which offer food and accommodation would demonstrate that these services are available to the physically disabled by providing ramps in place of steps and designated parking near an entrance.

## II. RULES, STANDARDS AND REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY

**THE SAME RULES, STANDARDS, AND ELIGIBILITY REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY, MUST APPLY TO A PHYSICALLY DISABLED PERSON AS APPLY TO ALL OTHER PERSONS.**

It is of course, common and accepted to establish eligibility requirements, rules and standards that must be met by any individual who wishes to participate in services and seek tenancy. For the purpose of the I.R.P.A., such rules must be reasonable and necessary for utilization. Rules or standards that exclude a person from participating because, for example, he/she is a member of a class rather than because he/she cannot fulfill the requirements, are unacceptable. The ability to adapt a service or a rental unit should be considered before a decision is made that a physically disabled person is incapable of complying with established reasonable rules, standards or requirements.

EXAMPLE

While it may be standard procedure to demand a deposit of 20% for a pair of prescription glasses, it would be discriminatory to demand a deposit of 50% from a person because he/she was in a wheelchair.

## III. ALTERNATIVES TO SERVICES OR TENANCY PROVIDED TO A PERSON WITH A PHYSICAL DISABILITY

A. IF A PHYSICALLY DISABLED PERSON IS UNABLE TO USE OR BENEFIT FROM SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY, BECAUSE OF HIS/HER DISABILITY, THE SERVICE PROVIDER OR LANDLORD SHOULD ATTEMPT TO REASONABLY ACCOMMODATE THAT INDIVIDUAL BY PROVIDING AN ALTERNATIVE.

B. IN PROVIDING A PHYSICALLY DISABLED PERSON WITH AN ALTERNATIVE TO A SERVICE CUSTOMARILY AVAILABLE TO THE PUBLIC OR TO TENANCY, THE SERVICE PROVIDER OR LANDLORD SHOULD CONSIDER THE FOLLOWING:

1. THE ALTERNATIVE RESULTS IN THE PHYSICALLY DISABLED PERSON BEING ABLE TO BENEFIT FROM WHAT IS CUSTOMARILY AVAILABLE TO THE PUBLIC.
2. THE ALTERNATIVE HAS THE LEAST ADVERSE IMPACT POSSIBLE ON THE PHYSICALLY DISABLED PERSON.
3. THE ALTERNATIVE IS OPERATED IN THE MOST INTEGRATED SETTING POSSIBLE.

In some circumstances, it is, of course, impossible to provide a physically disabled person with services or tenancy. In some of these circumstances, alternatives to the regular service or tenancy may be provided. With respect to services, all alternate provisions or modifications offered to the disabled should differ as little as possible from those customarily available to the public. The existence of specially designed

services for physically disabled persons should not preclude the requirement to continue to examine alternatives in order to provide access to regular services or rental units.

It may, of course, become evident that it is impractical or too costly to reorganize a service or a physical environment.

## IV. SAFETY

**IT MAY BE REASONABLE TO DENY ACCESS TO A SERVICE OR TENANCY IF IT CAN BE SHOWN, THAT BECAUSE OF AN INDIVIDUAL'S PHYSICAL CONDITION, ACCESS TO AND USE OF A SERVICE OR A RENTAL UNIT WOULD BE A DEMONSTRABLY GREATER RISK TO THE SAFETY OF OTHERS.**

**NOTE:** section 5 "Notwithstanding section 1, no person who is the owner of, or is responsible for the use, occupancy, construction or alteration of, a building as defined in the **Uniform Building Standards Act** shall, by reason only of the condition of the building, be found to have contravened section 3 or 4 as it relates to denial or discrimination on the basis of physical characteristics if he establishes that the building complies with the applicable requirements of that Act and the regulations under that Act."(4)

If it can be established by factual evidence that, because of an individual's physical disability, access to and use of a service or tenancy would be hazardous to his/her safety, or that of the other users of the facility, it would be reasonable to exclude that individual.

4. Individuals Rights Protection Act, Chapter 1-2, RSA, 1980.

If an individual otherwise meets the reasonable rules, or eligibility requirements for use of a service, or for tenancy, and is capable of conforming to the rules, the service provider or landlord should provide evidence that there is reasonable probability that, because of the individual's physical disability, use of the service or tenancy would be a demonstrably greater risk with regards to the safety of others.

In conclusion, it is generally accepted that an individual is the best judge of his/her own abilities. In extending services or tenancy to members of the public with physical disabilities, this principle should be considered. The imposition of risks on others, however, may be considered reasonable grounds for exclusion.

Example

It would be unreasonable and discriminatory to require a physically disabled person to prove that he/she can swim before entering a public pool, unless everyone is required to demonstrate the same level of ability.

## E. CONCLUSION

THESE PROPOSED GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL CHARACTERISTIC IN SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY have been developed to provide the public with assistance in complying with sections 3 and 4 of the Individual's Rights Protection Act.

The guidelines are based on a fundamental principle accepted by the Alberta Human Rights Commission - that persons with a physical disability should be accommodated, to the greatest extent possible, within the environment enjoyed by persons without a physical disability. This is the principle of reasonable accommodation. A working definition of reasonable accommodation has been provided. Further, having a physical disability does not decrease the rights and responsibilities of an individual as a member of society. Finally, services or rental units should not be designed to exclude persons with a physical disability.

The guidelines address four major areas - accessibility to services or tenancy; rules, standards and requirements for use of services or tenancy; alternatives to services or tenancy; and safety.

## F. SUMMARY OF GUIDELINES

### I. ACCESSIBILITY

A PERSON WITH A PHYSICAL DISABILITY SHOULD NOT BE DENIED ACCESS TO, NOR THE BENEFITS OF, A SERVICE OR TENANCY, SOLELY ON THE BASIS OF HIS/HER PHYSICAL DISABILITY.

### II. RULES, STANDARDS, AND REQUIREMENTS FOR THE USE OF A SERVICE TENANCY

THE SAME RULES, STANDARDS, AND ELIGIBILITY REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY, MUST APPLY TO A PHYSICALLY DISABLED PERSON AS APPLY TO ALL OTHER PERSONS.

III. ALTERNATIVES TO SERVICES OR TENANCY PROVIDED TO A PERSON WITH A PHYSICAL DISABILITY

A. IF A PHYSICALLY DISABLED PERSON IS UNABLE TO USE OR BENEFIT FROM SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY, BECAUSE OF HIS/HER DISABILITY, THE SERVICE PROVIDER OR LANDLORD SHOULD ATTEMPT TO REASONABLY ACCOMMODATE THAT INDIVIDUAL BY PROVIDING AN ALTERNATIVE.

B. IN PROVIDING A PHYSICALLY DISABLED PERSON WITH AN ALTERNATIVE TO A SERVICE CUSTOMARILY AVAILABLE TO THE PUBLIC OR TO TENANCY, THE SERVICE PROVIDER OR LANDLORD SHOULD CONSIDER THE FOLLOWING:

1. THE ALTERNATIVE RESULTS IN THE PHYSICALLY DISABLED PERSON BEING ABLE TO BENEFIT FROM WHAT IS CUSTOMARILY AVAILABLE TO THE PUBLIC.
2. THE ALTERNATIVE HAS THE LEAST ADVERSE IMPACT POSSIBLE ON THE PHYSICALLY DISABLED PERSON.
3. THE ALTERNATIVE IS OPERATED IN THE MOST INTEGRATED SETTING POSSIBLE.

IV. SAFETY

IT MAY BE REASONABLE TO DENY ACCESS TO A SERVICE OR TENANCY IF IT CAN BE SHOWN, THAT BECAUSE OF AN INDIVIDUAL'S PHYSICAL CONDITION, ACCESS TO AND USE OF A SERVICE OR A RENTAL UNIT WOULD BE A DEMONSTRABLY GREATER RISK TO THE SAFETY OF OTHERS.

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**INSTRUCTIONS**
**FOR THE USE OF**
**THE RESPONSE FORM**

1. Return completed Response Form(s) to:

   Mr. Jack Tutty
   Executive Director
   Alberta Human Rights Commission
   902, 10808 - 99 Avenue
   Edmonton, Alberta
   T5K 0G2

2. Please use this Response Form to submit your comments as the form has been designed to facilitate the processing of responses to the proposed guidelines.

   One sheet should be used for each section you wish to comment on. If more than one section of the proposed guidelines are to be addressed, please reproduce additional copies of the form.

   If the comments are more general in nature and do not address specific sections, general written submissions will be accepted and considered by the Commission.

3. Please check appropriate space to identify the particular section your response is addressing. It is important that the "Comments" "Proposed Re-wording" "and Rationale for Re-wording" sections relate to the space checked. If additional space is required please attach a separate sheet.

4. DEADLINE FOR SUBMISSION: To expedite the final review of these guidelines, Response Form or general comments should be returned to the above address **ON OR BEFORE 1:00 P.M. WEDNESDAY, AUGUST 31, 1983.**

5. All responses will be kept by the Alberta Human Rights Commission as a matter of Public Record.

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**RESPONSE FORM**

**PROPOSED GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO PERSONS WITH A PHYSICAL CHARACTERISTIC IN SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY**

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**REFERENCE SECTION**

(Please check appropriate space for particular section you are commenting on)

B. **Definitions**
- Physical Characteristics ..... ____
- Infirmity ..... ____
- Accommodation, Services & Facilities ..... ____
- Tenancy ..... ____
- Equal Treatment ..... ____

C. **Reasonable Accommodation**
- Underlying Principle ..... ____
- Definition ..... ____
- Special Circumstances ..... ____

D.I **Accessibility**
- Guideline ..... ____
- Interpretation ..... ____

D.II **Rules, Standards and Requirements**
- Guideline ..... ____
- Interpretation ..... ____

D.III **Alternatives to Services or Tenancy**
- Guideline ..... ____
- Interpretation ..... ____

D.IV **Safety**
- Guideline ..... ____
- Interpretation ..... ____

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**PLEASE PRINT OR TYPE**

**COMMENTS:**

**COMMENTS CONTINUED:**

**PROPOSED RE-WORDING:**

**RATIONALE FOR RE-WORDING**

**Please Print**

**NAME:** _____

**TITLE:** _____

**AFFILIATION:** _____

**TELEPHONE:** _____ **ADDRESS:** _____

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